



## **DEPARTMENT OF THE INTERIOR**

### **National Indian Gaming Commission**

#### **25 CFR Part 514**

##### **Fees**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Final rule.

**SUMMARY:** The National Indian Gaming Commission (NIGC or Commission) is amending its fee regulation. The Indian Gaming Regulatory Act (IGRA) requires Tribal gaming operations to pay a fee to the Commission for each gaming operation regulated by IGRA that conducts Class II or Class III gaming activity. IGRA also requires that “[t]he Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.” Pursuant to the Commission’s authority to “promulgate such regulations and guidelines as it deems appropriate to implement the provisions of [IGRA],” the Commission is amending its regulations to provide for the submittal of fees and fee worksheets on a quarterly basis rather than bi-annually; to provide for operations to calculate fees based on the gaming operation’s fiscal year rather than a calendar year; to amend certain language in the regulation to better reflect industry usage; to establish an assessment for fees and fee worksheets submitted one to ninety days late; and to establish a fingerprinting fee payment process.

**DATES:** *Effective Date:* October 1, 2012.

*Compliance Date:* Submitting fee worksheets and payments on a quarterly basis under §§ 514.5 and 514.6 is not required until January 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Michael Hoenig, National Indian Gaming Commission, 1441 L Street NW, Suite 9100 Washington, D.C. 20005.

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Indian Gaming Regulatory Act (IGRA) established an agency funding framework whereby gaming operations licensed by tribes pay a fee to the Commission for each gaming operation that conducts Class II or Class III gaming activity that is regulated by IGRA. 25 U.S.C. 2717(a)(1). These fees are used to fund the Commission in carrying out its statutory duties. Fees are based on the gaming operation's assessable gross revenues, which are defined as the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures. 25 U.S.C. 2717(a)(6). The rate of fees is established annually by the Commission and shall be payable on a quarterly basis. 25 U.S.C. 2717(a)(3). IGRA limits the total amount of fees imposed during any fiscal year to .08% of the gross gaming revenues of all gaming operations subject to regulation under IGRA. Failure of a gaming operation to pay the fees imposed by the Commission's fee schedule can be grounds for a civil enforcement action. 25 U.S.C. 2713(a)(1). The purpose of Part 514 is to establish how the NIGC sets and collects those fees, to establish a basic formula for tribes to utilize

in calculating the amount of fees to pay, and to advise of the potential consequences for failure to pay the fees.

## **II. Previous Rulemaking Activity**

On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680. On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule (NRR) setting out a consultation schedule and process for review. 76 FR 18457. Part 514 was included in the first regulatory group reviewed pursuant to the NRR.

The Commission conducted a total of 16 tribal consultations as part of its review of Part 514. Tribal consultations were held in every region of the country and were attended by many tribal leaders or their representatives. In addition to tribal consultations, on May 10, 2011, the Commission requested public comment on a Preliminary Draft of amendments to Part 514. 76 FR 26967. After considering the comments received from the public and through tribal consultations, the Commission published a Notice of Proposed Rulemaking, proposing five amendments to Part 514: changing the fee calculation from a calendar year to a fiscal year basis; changing the payment schedule to a quarterly payment system; ensuring language is consistent

with industry standards; creating a ticketing system for late fee and fee worksheet submissions; and formalizing the fingerprinting fee system. 76 FR 62684.

### **III. Review of Public Comments**

In response to our Notice of Proposed Rulemaking, published October 11, 2011, 76 FR 62684, we received the following comments.

#### *514.3 What is the maximum fee rate?*

**Comment:** One commenter noted that the proposed rule reiterates the maximum fee rate of 5% of amounts in excess of the \$1.5 million of assessable gross revenue. The comment acknowledges that the proposed rule does not propose an increase in the fee rate, but states nonetheless that such an increase could have a serious effect on any Tribe's ability to retain revenues. The comment recommends that prior to any amendment in fee rates mandated by the Commission, the Commission should consult with all Tribes paying fees under IGRA.

**Response:** The National Indian Gaming Commission fee rate is limited by the Indian Gaming Regulatory Act (25 U.S.C. 2717) to 2.5% of the first \$1.5 million of a facility's gross gaming revenue, and no more than 5% of amounts in excess of \$1.5 million of a facility's gross gaming revenue. Additionally, the Native American Technical Corrections Act of 2006 (Public Law 109-221) mandated that fees imposed by the Commission during any fiscal year shall not exceed 0.080% of the gross gaming revenues of all gaming operations subject to regulation under IGRA.

*514.4 What are "assessable gross revenues" and how does a tribe calculate the amount of the annual fee it owes?*

**Comment:** One commenter suggested that the regulation include a definition of “gross gaming revenue,” whether as defined in GAAP or through some other internationally accepted accounting standard.

**Response:** The GAAP definition of “Gross Gaming Revenue,” as well as other internationally accepted standards, may provide a standard definition, but are also subject to change and may be inconsistent with the definition contained in IGRA at 25 U.S.C. 2717(a)(6). The Commission therefore declines to further define “Gross Gaming Revenue” through a regulation.

**Comment:** Another commenter suggests that the regulation should be changed to allow the deduction of promotional items as “amounts paid out as prizes or paid for prizes awarded.”

**Response:** Pursuant to IGRA, gross gaming revenue constitutes “the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.” In accordance with GAAP and industry standard practices, promotional items given to patrons that are not the result of winning wagers are not considered prizes paid or prizes awarded. The Commission, therefore, declines to allow the deduction of promotional items as prizes paid or prizes awarded as it would be inconsistent with the plain language of IGRA.

**Comment:** One commenter stated that the computation of gross revenue example in the proposed rule does not reflect the intent of the regulation. In support of this, the

commenter cited to the regulation's example that separates gross gaming revenues into two categories – money wagered and entry fees. The commenter suggests that regulation text directing tribes to “show the amount derived from each type of game” is inconsistent with the regulation and leads to confusion and potential miscalculation of fees. The Commission should review the examples and promulgate a bulletin providing guidance on the matter.

**Response:** Although the sub-section referenced in the comment was intended only as an example, and nothing in the regulation requires the segregation of types of games and entry fees, we have removed it from this rule. As for guidance on the computation of gross gaming revenue, the Commission intends to offer a broad array of technical assistance and training in conjunction with this rule.

The Commission also notes that it is amending Part 514 to change the term “admission fees” to “entry fees” in section 514.4(a). “Entry fee” is a term commonly used in the gaming industry and the Commission believes the clarification will eliminate concern that an “admission fee” includes admission to concerts or other non-gaming activity.

*514.5 When must a tribe pay its annual fees? and 514.6 What are the quarterly statements that must be submitted with the fee payments?*

**Comment:** While two commenters stated their support for changing from a bi-annual submission requirement to a quarterly submission requirement, one commenter opposes the change, stating that it makes it more difficult for Tribes to

calculate fees and will result in more instances of late or inaccurate quarterly statements and/or fee payments.

**Response:** The recommendation to maintain a bi-annual fee was not adopted. The Commission finds that changing the submission requirement back to quarterly is consistent with the requirements of the Indian Gaming Regulatory Act, 25 U.S.C. 2717(f), which states that “[t]he Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.” Further, this rule does not prohibit pre-payment of fees. Fee worksheets, however, must be submitted on a quarterly basis, even if the fee has been prepaid.

This rule also changes the timeframe of the fee calculation from a gaming operation’s calendar year to its fiscal year. Though there were no comments in opposition to this change, it is important to note that this rule does not mandate that a tribe change its fiscal year, but rather requires that a tribe base its fee calculation on its fiscal year. Thus, if a tribe’s fiscal year is based on its calendar year, there is no need to change. The Commission believes that the use of a fiscal year for calculating annual fees and completing fee worksheets will result in fewer inaccuracies in fee calculations.

*514.9 What happens if a tribe submits its fee payment or quarterly statement late?*

**Comment:** The Commission is amending Part 514 to add a “ticket” system which assesses a fine for a late fee payment. The proposed Rule distinguishes between “late payments” and “failure to pay annual fees.” A payment received between one and

ninety days late is a “late payment” and is subject to a late payment fine. A payment received after 90 days constitutes a “failure to pay annual fees” and subjects the tribe to a potential notice of violation (NOV) and civil fine assessment. The Chair shall consider any mitigating circumstances surrounding the late payments and, at the Chair’s discretion, reduce the late fee or the civil fine due. Per federal law, any fines are payable to U.S. Treasury, not the NIGC.

The comments were overwhelmingly supportive of the proposed rule’s implementation of a late payment system. There were, however two comments on how to implement the system. One commenter stated that the proposed late fee structure is too severe. According to the commenter, an assessment of 10% is too harsh, especially for a payment that may only be a few days late. Another commenter stated that the late payment penalties should start at 1% for statements/payments one to thirty days late, 2% for statements/payments thirty-one to sixty days late, 5% for statements/payments sixty-one to ninety days late, and 25% for statements/payments more than ninety days late.

**Response:** The Commission believes that a late-fee structure of 10%, 15%, and 20% properly emphasizes the importance of annual fees to the continued operation of the NIGC. Timely submission of fee worksheets and payments is vital to the NIGC’s ability to fulfill its regulatory duties and provide technical assistance and training to the tribal gaming operations. Accordingly, any late fee must provide incentive to gaming operations to pay fees in a timely manner. The Commission is concerned that setting late fees too low could discourage timely payment. Therefore, it did not adopt the suggestions to lower the late fee percentages.



**Comment:** Two commenters suggested the Commission consider the inclusion of a grace period, such as no late fees for payments 1-7 days late, and/or reduce the percentage rate for a late payment of thirty days or less.

**Response:** The recommendation to provide a grace period before a late fee may be assessed is not adopted. The Commission is concerned that the inclusion of a grace period may have the effect of constructively pushing back the fee deadline to the point that the grace period ends. The Commission also notes that the purpose of changing the basis for fee calculation to the fiscal year is to make timely fee payments easier. Further, the Commission's use of the "mailbox rule" gives gaming operations the maximum amount of time to prepare and submit fee payments and fee worksheets. According to the mail-box rule, a submission is considered received by the Commission when it is postmarked, not when it is received by the NIGC.

**Comment:** One commenter asked that the NIGC consider adding language to the effect that the NIGC will take factors such as the size of the tribe's gaming operation, as well as other equitable considerations, into account when assessing late fees.

**Response:** The suggestion to specify that the above listed factors be considered by the Chair when assessing a late fee is not adopted. Pursuant to this rule, the Chair will take into consideration any information submitted by a tribe in its response to the notice of late fees. See 514.9(b). This information may include the size of the Tribe's gaming operation and other equitable considerations. Specifying what those considerations may be would effectively limit the factors the Chair may consider when determining whether to issue a late fee and the amount of the fee. The Commission does not want to limit what the Chair may consider.

**Comment:** One commenter stated that the Commission should clarify whether late fees will run concurrently with any enforcement action taken under 514.10 of the proposed rule and, if so, suggests a cap on any late fees assessed in conjunction with a NOV or enforcement action.

**Response:** The recommendation to further clarify the regulation is not adopted. A late fee and civil fine assessment will likely not be issued concurrently. Under this rule, the first step is to issue a notice of late fee. If the fee payment or fee worksheet is submitted within 90 days of the due date, the Chair may propose a late fee. The proposed late fee will depend on the timeliness of the submission. If, however, the fee or fee worksheet is not submitted within the initial 90 days, the lateness becomes a failure to pay and rather than a late fee, the Chair could instead issue a NOV or closure order. Even if a late fee and civil fine assessment were to issue simultaneously though, the late fee would have to be incorporated into a proposed civil fine. Pursuant to IGRA, the late fee and civil fine cannot collectively exceed the statutory limit.

**Comment:** One commenter stated that the regulation should require that before the NIGC can find a tribe has failed to pay its fees and issue a NOV or temporary closure order, it must issue two notices to the tribe during the initial 90 days. Another commenter recommended that the NIGC engage in consultation with a tribe before initiating the NOV process.

**Response:** The recommendations to require two notices or engage in consultation before a NOV or temporary closure order may be issued are not adopted. The Chair and NIGC staff will continue to work with Tribes and gaming operations to ensure

that enforcement is the last option, to be used only if assistance and compliance have failed. Typically, the NIGC will have been in informal discussions with a tribe or gaming operation long before a NOV is issued. The Commission chooses not to add to the NOV requirements already mandated by IGRA and NIGC regulations.

**Comment:** Another commenter stated that the term *proposed late fees* is inaccurate and should be changed to *late fees assessed*.

**Response:** The recommendation is not adopted. Late fees do not become final unless the recipient of the fee fails to appeal or, on appeal, the fee is upheld by the full Commission.

**Comment:** One commenter stated that late fees assessed are, in fact, operating expenses. The commenter suggested that if the Commission's intent is to prohibit tribes from deducting the amount of late penalty from the fee calculation, the regulation should be clarified to state as much.

**Response:** This rule requires late fees to be paid by the person assessed and that they not be treated as an operating expense of a gaming operation. These changes ensure that other parties will not be responsible for the late fee. Further, the calculation of operating expenses is not relevant to the fee calculation. Fees are based on assessable gross revenues, which are defined by 25 U.S.C. 2717(a)(6) and section 514.4 of this rule as "the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures." Because operating expenses are not part of the fee calculation, the suggestion to clarify the rule to prohibit tribes from deducting the late penalty from the fee calculation is not adopted.

*514.17 How are fingerprint processing fees collected by the Commission?*

**Comment:** Two commenters objected to fingerprint fees being included as a separate section of the regulation on the grounds that fees should be covered by the annual fee already collected by the Commission.

**Response:** This comment is not adopted. IGRA does not require the NIGC to process fingerprints and not all tribes utilize the service. The service will continue to be charged as a separate fee only to those tribes that utilize the NIGC's fingerprint processing service. The Commission believes formalizing the procedures for assessing fingerprint card processing fees in a regulation provides transparency and clarity.

#### **IV. Regulatory Matters**

*Regulatory Flexibility Act*

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

*Small Business Regulatory Enforcement Fairness Act*

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition,

employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

#### *Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

#### *Takings*

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *National Environmental Policy Act*

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

#### *Paperwork Reduction Act*

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C.

3501 *et seq.* and assigned OMB Control Number 3141– 0007, which expired in August of 2011. The NIGC is in the process of reinstating that Control Number. Although the rule changes the collection from bi-annually to quarterly, the proposed rule does not require any significant changes in information collection previously approved under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.* At the time OMB Control Number 3141-0007 was assigned, Part 514 required quarterly submissions. This was changed to a bi-annually submission requirement on August 26, 2009 without obtaining a new OMB Control Number. 74 FR 36926. Accordingly, no significant changes in information will occur since the last OMB Control Number was assigned.

#### **List of Subjects in 25 CFR Part 514**

Gambling, Indians – Lands, Indians – Tribal Government, Reporting and recordkeeping requirements.

- For the reasons set forth in the preamble, the Commission revises 25 CFR part 514 to read as follows:

#### **PART 514--FEES**

Sec.

514.1 What is the purpose of this part?

514.2 When will the annual rates be published?

514.3 What is the maximum fee rate?

514.4 What are "assessable gross revenues" and how does a tribe calculate the amount of the annual fees it owes?

514.5 When must a tribe pay its annual fees?

514.6 What are the quarterly statements that must be submitted with the fee payments?

514.7 What should a tribe do if it changes its fiscal year?

514.8 Where should fees, quarterly statements, and other communications about fees be sent?

514.9 What happens if a tribe submits its fee payment or quarterly statement late?

514.10 When does a late payment or quarterly statement submission become a failure to pay?

514.11 Can a tribe or gaming operation appeal a proposed late fee?

514.12 When does a notice of late submission and/or a proposed late fee become a final order of the Commission and final agency action?

514.13 How are late submission fees paid, and can interest be assessed?

514.14 What happens if a tribe overpays its fees or if the Commission does not expend the full amount of fees collected in a fiscal year?

514.15 May tribes submit fingerprint cards to the NIGC for processing?

514.16 How does the Commission adopt the fingerprint processing fee?

514.17 How are fingerprint processing fees collected by the Commission?

**Authority:** 25 U.S.C. 2706, 2710, 2710, 2717, 2717a

#### **§ 514.1 What is the purpose of this part?**

Each gaming operation under the jurisdiction of the Commission, including a tribe with a certificate of self-regulation, shall pay to the Commission annual fees as

established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

**§ 514.2 When will the annual rates be published?**

(a) The Commission shall adopt preliminary rates for each calendar year no later than March 1st of each year, and, if considered necessary, shall modify those rates no later than June 1st of that year.

(b) The Commission shall publish the rates of fees in a notice in the Federal Register.

**§ 514.3 What is the maximum fee rate?**

(a) The rates of fees imposed shall be--

(1) No more than 2.5% of the first \$ 1,500,000 (1st tier), and

(2) No more than 5% of amounts in excess of the first \$ 1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation subject to the jurisdiction of the Commission.

(b) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25% of assessable gross revenues from self-regulated class II gaming



operations.

**§ 514.4 What are "assessable gross revenues" and how does a tribe calculate the amount of the annual fee it owes?**

(a) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, entry fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures as reflected in the gaming operation's audited financial statements.

(b) Each gaming operation subject to these regulations shall calculate the annual fee based on the gaming operation's fiscal year.

(c) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(d) The allowance for amortization of capital expenditures for structures shall be either:

(1) An amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% of the cost of structures in use during only a part of the year; or

(2) An amount not to exceed 10% of the total amount of depreciation expenses for the year.

(e) All class II and III revenues from gaming operations are to be included.

**§ 514.5 When must a tribe pay its annual fees?**

Each gaming operation shall calculate the amount of fees to be paid and remit them with the quarterly statement required in § 514.6. The fees payable shall be computed using:

(a) The most recent rates of fees adopted by the Commission pursuant to § 514.2,

(b) The assessable gross revenues for the previous fiscal year as calculated using § 514.4, and

(c) The amounts paid and credits received during the fiscal year, if applicable.

**§ 514.6 What are the quarterly statements that must be submitted with the fee payments?**

(a) Each gaming operation subject to the jurisdiction of the Commission shall file with the Commission quarterly statements showing its assessable gross revenues for

the previous fiscal year.

(b) These statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures.

(c) The quarterly statements shall be sent to the Commission within three (3) months, six (6) months, nine (9) months, and twelve (12) months of the end of the gaming operation's fiscal year.

(d) The quarterly statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.

(e) Each quarterly statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(1) Multiply the 1st tier assessable gross revenues, as calculated using § 514.4, by the rate for those revenues adopted by the Commission.

(2) Multiply the 2nd tier assessable gross revenues, as calculated using § 514.4, by the rate for those revenues adopted by the Commission.

(3) Add (total) the results (products) obtained in paragraphs (e)(1) and (2) of this section.

(4) Multiply the total obtained in paragraph (e)(3) of this section by 1/4.

(5) The amount computed in paragraph (e)(4) of this section is the amount to be remitted.

(f) Examples of fee computations follow:

(1) Where a filing is made for the first quarter of the fiscal year, the previous year's assessable gross revenues as calculated using section 514.4 of this part are \$2,000,000, the fee rates adopted by the Commission are 0.0% on the first \$1,500,000 and .08% on the remainder, the amounts to be used and the computations to be made are as follows:

1st tier revenues--\$1,500,000 x 0.0%	0
=	
2nd tier revenues--\$500,000 x .08% =	\$400
Annual fees	\$400
Multiply for fraction of year-- 1/4 or	.25

Fees for first payment	\$100
Amount to be remitted	\$100

(2) [Reserved]

(g) As required by part 571 of this chapter, quarterly statements must be reconciled with a tribe's audited or reviewed financial statements for each gaming location. These reconciliations must be made available upon the request of any authorized representative of the NIGC.

#### **§ 514.7 What should a tribe do if it changes its fiscal year?**

If a gaming operation changes its fiscal year, it shall notify the Commission of the change within thirty (30) days. The Commission may request that the tribe prepare and submit to the Commission the fees and statements required by this subsection for the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be sent to the Commission within ninety (90) days of its request.

#### **§ 514.8 Where should fees, quarterly statements, and other communications about fees be sent?**

The statements, remittances and communications about fees shall be transmitted to

the Commission at the following address: Comptroller, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

**§ 514.9 What happens if a tribe submits its fee payment or quarterly statement late?**

(a) In the event that a gaming operation fails to submit a fee payment or quarterly statement in a timely manner, the Chair of the Commission may issue a notice specifying:

- (1) The date the statement and/or payment was due;
- (2) The number of calendar days late the statement and/or payment was submitted;
- (3) A citation to the federal or tribal requirement that has been or is being violated;
- (4) The action being considered by the Chair; and
- (5) Notice of rights of appeal pursuant to part 577 of this chapter.

(b) Within fifteen (15) days of service of the notice, a respondent may submit written information about the notice to the Chair. The Chair shall consider any information

submitted by the respondent as well as the respondent's history of untimely submissions or failure to file statements and/or fee payments over the preceding five (5) years in determining the amount of the late fee, if any.

(c) When practicable, within thirty (30) days of issuing the notice described in paragraph (a) of this section to a respondent, the Chair of the Commission may assess a proposed late fee against a respondent for each failure to file a timely quarterly statement and/or fee payment:

(1) For statements and/or fee payments one (1) to thirty (30) calendar days late, the Chair may propose a late fee of up to, but not more than 10% of the fee amount for that quarter, as calculated in § 514.6(e);

(2) For statements and/or fee payments thirty-one (31) to sixty (60) calendar days late, the Chair may propose a late fee of up to, but not more than 15% of the fee amount for that quarter, as calculated in § 514.6(e);

(3) For statements and/or fee payments sixty-one (61) to ninety (90) calendar days late, the Chair may propose a late fee of up to, but not more than 20% of the fee amount for that quarter, as calculated in § 514.6(e).

**§ 514.10 When does a late payment or quarterly statement submission become a failure to pay?**

(a) Statements and/or fee payments over ninety (90) calendar days late constitute a failure to pay the annual fee, as set forth in IGRA, 25 U.S.C. 2717(a)(3), and NIGC regulations, 25 CFR 573.6(a)(2). In accordance with 25 U.S.C. 2717(a)(3), failure to pay fees shall be grounds for revocation of the approval of the Chair of any license, ordinance or resolution required under IGRA for the operation of gaming.

(b) In accordance with § 573.6(a)(2) of this chapter, if a tribe, management contractor, or individually owned gaming operation fails to pay the annual fee, the Chair may issue a notice of violation and, simultaneously with or subsequently to the notice of violation, a temporary closure order.

**§ 514.11 Can a tribe or gaming operation appeal a proposed late fee?**

(a) Proposed late fees assessed by the Chair may be appealed under part 577 of this chapter.

(b) At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chair and the respondent may agree to settle the notice of late submission, including the amount of the proposed late fee. In the event a settlement is reached, a settlement agreement shall be prepared and executed by the Chair and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the notice or late fee in question, except as otherwise



provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the proposed late fee before the Commission in accordance with part 577 of this chapter.

**§ 514.12 When does a notice of late submission and/or a proposed late fee become a final order of the Commission and final agency action?**

If the respondent fails to appeal under part 577 of this chapter, the notice and the proposed late fee shall become a final order of the Commission and final agency action.

**§ 514.13 How are late submission fees paid, and can interest be assessed?**

(a) Late fees assessed under this part shall be paid by the person or entity assessed and shall not be treated as an operating expense of the operation.

(b) The Commission shall transfer the late fee paid under this subchapter to the U.S. Treasury.

(c) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date.

**§ 514.14 What happens if a tribe overpays its fees or if the Commission does not**

**expend the full amount of fees collected in a fiscal year?**

(a) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due according to § 514.4.

(b) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended to defray the costs of operations of the Commission.

**§ 514.15 May tribes submit fingerprint cards to the NIGC for processing?**

Tribes may submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation (FBI) and the Commission may charge a fee to process fingerprint cards on behalf of the tribes.

**§ 514.16 How does the Commission adopt the fingerprint processing fee?**

(a) The Commission shall review annually the costs involved in processing fingerprint cards and, by a vote of not less than two of its members, shall adopt preliminary rates for each calendar year no later than March 1st of that year, and, if

considered necessary, shall modify those rates no later than June 1st of that year.

(b) The fingerprint fee charge shall be based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe.

**§ 514.17 How are fingerprint processing fees collected by the Commission?**

(a) Fees for processing fingerprint cards will be billed monthly to each Tribe for cards processed during the prior month. Tribes shall pay the amount billed within forty-five (45) days of the date of the bill.

(b) The Chair may suspend fingerprint card processing for a tribe that has a bill remaining unpaid for more than forty-five (45) days.

(c) Fingerprint fees shall be sent to the following address: Comptroller, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

DATED: January \_27\_, 2012, Washington, DC.

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Tracie L. Stevens,  
Chairwoman

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Steffani A. Cochran,  
Vice-Chairwoman

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Daniel J. Little,  
Associate Commissioner

Billing Code: 7565-01-P

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